

AMENDED IN ASSEMBLY JANUARY 5, 2004

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 854

Introduced by Assembly Member Koretz

February 20, 2003

~~An act to add Article 9 (commencing with Section 41995) to Chapter 3 of Part 4 of Division 26 of the Health and Safety Code, relating to air quality. An act to amend Section 1170 of the Penal Code, relating to crime.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 854, as amended, Koretz. ~~Air quality: dry cleaning operation grant program. Crime.~~

Existing law sets forth legislative findings, declarations, and expressions of intent regarding the purpose of imprisonment for crime, that being punishment, not to preclude, however, programs, including educational programs, designed to rehabilitate nonviolent, first-time felony offenders.

This bill would recast these provisions declaring that the purpose of imprisonment for crime is punishment, incapacitation by incarceration, and rehabilitation, not precluding programs, including, but not limited to, educational programs, designed to rehabilitate nonviolent felony offenders.

~~Existing law designates the State Air Resources Board as the state agency charged with coordinating efforts to attain and maintain ambient air quality standards.~~

~~This bill would prohibit the use of perchloroethylene by any dry cleaning operation in the state after January 1, 2014. The bill would~~

~~require the state board to impose a \$3 fee on every person that purchases a gallon of perchloroethylene in the state, and to deposit the revenues generated by that fee in the Nontoxic Dry Cleaning Incentive Trust Account, which would be established in the Air Pollution Control Fund by the bill. The bill would authorize moneys deposited in the account to be expended by the state board to fund a grant program, upon appropriation by the Legislature, that would provide incentives for dry cleaners in the state that utilize perchloroethylene in their operations to transition to utilizing nontoxic alternatives. The bill would require the state board to develop and establish that grant program, which would provide a \$10,000 grant to any eligible dry cleaning operation that is transitioning to wet cleaning or carbon dioxide cleaning, and a \$5,000 grant to any eligible dry cleaning operation that is transitioning to hydrocarbon or silicon-based cleaning.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~yes~~ *no*. State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. The Legislature finds and declares all of the~~
2 *SECTION 1. Section 1170 of the Penal Code is amended to*
3 *read:*
4 1170. (a) (1) The Legislature finds and declares that the
5 purpose of imprisonment for crime is punishment, *incapacitation*
6 *by incarceration, and rehabilitation. —This purpose is These*
7 *purposes are* best served by terms proportionate to the seriousness
8 of the offense with provision for uniformity in the sentences of
9 offenders committing the same offense under similar
10 circumstances. The Legislature further finds and declares that the
11 elimination of disparity and the provision of uniformity of
12 sentences can best be achieved by determinate sentences fixed by
13 statute in proportion to the seriousness of the offense as determined
14 by the Legislature to be imposed by the court with specified
15 discretion.
16 (2) Paragraph (1) shall not be construed to preclude programs,
17 including, *but not limited to*, educational programs, that are
18 designed to rehabilitate nonviolent, ~~first-time~~ felony offenders.
19 The Legislature encourages the development of policies and
20 programs designed to educate and rehabilitate nonviolent;

1 ~~first-time~~ felony offenders consistent with the purpose of
2 imprisonment.

3 (3) In any case in which the punishment prescribed by statute
4 for a person convicted of a public offense is a term of
5 imprisonment in the state prison of any specification of three time
6 periods, the court shall sentence the defendant to one of the terms
7 of imprisonment specified unless the convicted person is given any
8 other disposition provided by law, including a fine, jail, probation,
9 or the suspension of imposition or execution of sentence or is
10 sentenced pursuant to subdivision (b) of Section 1168 because he
11 or she had committed his or her crime prior to July 1, 1977. In
12 sentencing the convicted person, the court shall apply the
13 sentencing rules of the Judicial Council. The court, unless it
14 determines that there are circumstances in mitigation of the
15 punishment prescribed, shall also impose any other term that it is
16 required by law to impose as an additional term. Nothing in this
17 article shall affect any provision of law that imposes the death
18 penalty, that authorizes or restricts the granting of probation or
19 suspending the execution or imposition of sentence, or expressly
20 provides for imprisonment in the state prison for life. In any case
21 in which the amount of preimprisonment credit under Section
22 2900.5 or any other provision of law is equal to or exceeds any
23 sentence imposed pursuant to this chapter, the entire sentence shall
24 be deemed to have been served and the defendant shall not be
25 actually delivered to the custody of the Director of Corrections.
26 The court shall advise the defendant that he or she shall serve a
27 period of parole and order the defendant to report to the parole
28 office closest to the defendant's last legal residence, unless the
29 in-custody credits equal the total sentence, including both
30 confinement time and the period of parole. The sentence shall be
31 deemed a separate prior prison term under Section 667.5, and a
32 copy of the judgment and other necessary documentation shall be
33 forwarded to the Director of Corrections.

34 (b) When a judgment of imprisonment is to be imposed and the
35 statute specifies three possible terms, the court shall order
36 imposition of the middle term, unless there are circumstances in
37 aggravation or mitigation of the crime. At least four days prior to
38 the time set for imposition of judgment, either party or the victim,
39 or the family of the victim if the victim is deceased, may submit
40 a statement in aggravation or mitigation to dispute facts in the

1 record or the probation officer's report, or to present additional
2 facts. In determining whether there are circumstances that justify
3 imposition of the upper or lower term, the court may consider the
4 record in the case, the probation officer's report, other reports
5 including reports received pursuant to Section 1203.03 and
6 statements in aggravation or mitigation submitted by the
7 prosecution, the defendant, or the victim, or the family of the
8 victim if the victim is deceased, and any further evidence
9 introduced at the sentencing hearing. The court shall set forth on
10 the record the facts and reasons for imposing the upper or lower
11 term. The court may not impose an upper term by using the fact
12 of any enhancement upon which sentence is imposed under any
13 provision of law. A term of imprisonment shall not be specified if
14 imposition of sentence is suspended.

15 (c) The court shall state the reasons for its sentence choice on
16 the record at the time of sentencing. The court shall also inform the
17 defendant that as part of the sentence after expiration of the term
18 he or she may be on parole for a period as provided in Section
19 3000.

20 (d) When a defendant subject to this section or subdivision (b)
21 of Section 1168 has been sentenced to be imprisoned in the state
22 prison and has been committed to the custody of the Director of
23 Corrections, the court may, within 120 days of the date of
24 commitment on its own motion, or at any time upon the
25 recommendation of the Director of Corrections or the Board of
26 Prison Terms, recall the sentence and commitment previously
27 ordered and resentence the defendant in the same manner as if he
28 or she had not previously been sentenced, provided the new
29 sentence, if any, is no greater than the initial sentence. The
30 resentence under this subdivision shall apply the sentencing rules
31 of the Judicial Council so as to eliminate disparity of sentences and
32 to promote uniformity of sentencing. Credit shall be given for time
33 served.

34 (e) (1) Notwithstanding any other law and consistent with
35 paragraph (1) of subdivision (a) of Section 1170, if the Director of
36 Corrections or the Board of Prison Terms or both determine that
37 a prisoner satisfies the criteria set forth in paragraph (2), the
38 director or the board may recommend to the court that the
39 prisoner's sentence be recalled.



1 (2) The court shall have the discretion to resentence or recall if
2 the court finds both of the following:

3 (A) The prisoner is terminally ill with an incurable condition
4 caused by an illness or disease that would produce death within six
5 months, as determined by a physician employed by the
6 department.

7 (B) The conditions under which the prisoner would be released
8 or receive treatment do not pose a threat to public safety.

9 The Board of Prison Terms shall make findings pursuant to this
10 subdivision before making a recommendation for resentence or
11 recall to the court. This subdivision does not apply to a prisoner
12 sentenced to death or a term of life without the possibility of
13 parole.

14 (3) Within 10 days of receipt of a positive recommendation by
15 the director or the board, the court shall hold a hearing to consider
16 whether the prisoner's sentence should be recalled.

17 (4) The prisoner or his or her family member or designee may
18 request consideration for recall and resentencing by contacting the
19 chief medical officer at the prison or the Director of Corrections.
20 Upon receipt of the request, if the director determines that the
21 prisoner satisfies the criteria set forth in paragraph (2), the director
22 or board may recommend to the court that the prisoner's sentence
23 be recalled. The director shall submit a recommendation for
24 release within 30 days in the case of inmates sentenced to
25 determinate terms and, in the case of inmates sentenced to
26 indeterminate terms, the director may make a recommendation to
27 the Board of Prison Terms with respect to the inmates who have
28 applied under this section. The board shall consider this
29 information and make an independent judgment pursuant to
30 paragraph (2) and make findings related thereto before rejecting
31 the request or making a recommendation to the court. This action
32 shall be taken at the next lawfully noticed board meeting.

33 (5) Any recommendation for recall submitted to the court by
34 the Director of Corrections or the Board of Prison Terms shall
35 include one or more medical evaluations, a postrelease plan, and
36 findings pursuant to paragraph (2).

37 (6) If possible, the matter shall be heard before the same judge
38 of the court who sentenced the prisoner.

(f) Any sentence imposed under this article shall be subject to the provisions of Sections 3000 and 3057 and any other applicable provisions of law.

(g) A sentence to state prison for a determinate term for which only one term is specified, is a sentence to state prison under this section.

following:

(a) ~~State and federal scientific health agencies have determined that perchloroethylene is either a probable, possible, or known carcinogen.~~

(b) ~~Occupational health studies have found elevated rates of lung, cervical, bladder, and other cancers in dry cleaning workers.~~

(c) ~~Laboratory studies have found increased numbers of cancerous tumor in animals exposed to perchloroethylene.~~

SEC. 2.—Article 9 (commencing with Section 41995) is added to Chapter 3 of Part 4 of Division 26 of the Health and Safety Code, to read:

Article 9.—Perchloroethylene In Dry Cleaning Operations

41995.—Perchloroethylene may not be utilized by any dry cleaning operation in the state after January 1, 2014.

41996.—(a) The state board shall impose a three dollar (\$3.00) fee on every person that purchases a gallon of perchloroethylene in the state.

(b) ~~Moneys generated by the fee imposed pursuant to subdivision (a) shall be deposited in the Nontoxic Dry Cleaning Incentive Trust Account in the Air Pollution Control Fund, which is hereby established.~~

(c) ~~Moneys deposited in the Nontoxic Dry Cleaning Incentive Account may be expended by the state board to fund the grant program described in Section 41997, upon appropriation by the Legislature for that purpose.~~

41997.—(a) The state board shall develop and establish a grant program that provides incentives for dry cleaners in the state that utilize perchloroethylene in their operations to transition to utilizing nontoxic alternatives.

(b) ~~The state board shall determine the eligibility of grant recipients.~~

- 1 ~~(c) The state board shall make the following grants available to~~
- 2 ~~eligible recipients for the purchase of new equipment:~~
- 3 ~~(1) Ten thousand dollar (\$10,000) grants to any dry cleaning~~
- 4 ~~operation that is transitioning to wet cleaning or carbon dioxide~~
- 5 ~~cleaning.~~
- 6 ~~(2) Five thousand dollar (\$5,000) grants to any dry cleaning~~
- 7 ~~operation that is transitioning to hydrocarbon or silicon-based~~
- 8 ~~cleaning.~~

